

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 844 of 1985
With
FIRST APPEAL No. 845 of 1985

For Approval and Signature:

HONOURABLE MR. JUSTICE R.S.GARG

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Appellant(s)
Versus
PATEL KANJIBHAI LALLUDAS & 1 - Defendant(s)

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Appearance :

MS.MAYA DESAI for MR MD PANDYA for Appellant(s) : 1,
None for Respondents in each of the appeal

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CORAM : HONOURABLE MR. JUSTICE R.S.GARG

Date : 27/06/2007

ORAL JUDGMENT

1. Ms. Maya Desai, learned counsel for the
appellant under the authority of Shri M.D.

Pandya; none for the respondents in each of the appeal though served.

2. Being aggrieved by the award dated 7.8.84 passed by the M.A.C. Tribunal [Main], Mehsana in M.A.C. Petition No. 458/81 [Patel Kanjibhai Lalludas v. Thakor Zenaji Khodaji], the appellant has filed First Appeal No. 844/85 and being aggrieved by the award in M.A.C. Petition No. 459/81 [Patel Pramukhbhai Kanubhai v. Thakor Leenaji Khodaji], the appellant has filed First Appeal No. 845 of 1985 with a submission that the learned Tribunal was unjustified in holding that the total negligence was on the part of the driver of the bus.

3. After taking me through the evidence and the other material available on the records, it is submitted that if the visibility was clear and the jeep driver could see that the S.T. Bus had crossed middle of the road and was more towards the jeep, then, the jeep driver should have tried to avoid the accident and if he did not try to avoid the accident, he should be held negligent. From the panchnama available on the

records, it would appear that the S.T. Bus bearing registration No. GRT 8373 was going from south to north while the jeep bearing registration no. GJV 5353 was coming from north to south. The panchnama also shows that the road was almost about 24 feet wide and the bus had crossed the middle of the road and thereafter dashed the jeep. From this evidence, ordinarily, one should not find any difficulty in holding that the bus driver was rash and negligent in driving the vehicle and causing the accident. It is not expected of a person who is on the left of his road to go on the kachcha road or at any other place to avoid the accident. An attempt to avoid the accident would be prudent act on the part of the driver, but if he is unable to avoid the accident, then, it cannot be said that he was rash and negligent. In the present case, evidence available on the records clearly shows that the bus was driven rashly and negligently and was the cause of the accident. From the statement of Jenaji Khodaji, it would clearly appear that even after seeing the on-coming

jeep, he did not remain on the left side of the road, but tried to overtake the vehicle which was in front of the bus. A driver after finding that some other vehicle is coming from the other side of the road, would not try to overtake any other vehicle, because, law of time and distance which is understood by a driver clearly shows that with the moderate speed of 40 kilometers of each vehicle in case of vehicle coming from the other side would become 80 kilometers, because, each of the vehicle traveling at a speed of 40 kilometers at their end, would travel same distance. In the present case, the total distance between the jeep and the S.T.Bus was hardly 200 feet. The distance of hardly 200 feet at the moderate speed of 30 to 40 kilometers can be covered in hardly five to seven seconds. If the bus driver could not wait for five to seven seconds and tried to overtake the vehicle which was ahead, his rashness would float on the surface of the records.

4. Learned Tribunal was absolutely justified in holding the driver was guilty of rashness and

negligent and also justified in holding the appellant responsible to make payment.

5. The appeals are dismissed. No costs. Interim relief, if any, is vacated.

[R.S. GARG, J.]

pirzada/-